No. 92-318

In The

Supreme Court of the United States

October Term, 1992

PATRICIA COYLE GILMAN,

Petitioner,

vs.

ROBERT H. GILMAN,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Connecticut

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE PETITIONER WAS DENIED DUE PROCESS OF LAW WHEN THE APPELLATE COURT OF THE STATE OF CONNECTICUT, CONSISTENT WITH ITS PUBLISHED RULES, DISMISSED HER APPEAL BECAUSE SHE MISSED SEVERAL PREVIOUS DEADLINES FOR FILING HER BRIEF AND SHE THEN FAILED TO COMPLY WITH AN ORDER OF THAT COURT REQUIRING HER TO FILE HER BRIEF BY A DATE CERTAIN.

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OPINION BELOW

The opinion of the Connecticut Supreme Court is officially reported at 220 Conn. 909 (1992). It is reproduced in the Appendix to the Petition at page A-1. The Appellate Court's underlying order of dismissal is also reproduced in the Appendix at page A-2.

JURISDICTION

The petitioner has invoked the jurisdiction of this Court pursuant to Title 28 United States Code § 1257(a).

STATEMENT OF THE CASE

In her "Statement of the Case," Petitioner represents that the Connecticut Appellate Court's dismissal of her appeal was based solely on counsel's inability to file her brief prior to the due date because of counsel's personal exigencies. That portion of the Petition also claims that the required brief was not filed on the last date it was due, December 31, 1991, solely because of counsel's personal problems. These claims are inconsistent with representations made elsewhere in the record. In several motions for extensions of time and motions for relief from orders requiring the filing of a brief by a date certain, counsel for the petitioner represented that additional time was necessary because counsel had been continually involved in the trial of several other matters.[1]

The underlying order of the Appellate Court of the State of Connecticut dismissing Petitioner's appeal does not state whether that court accepted the representations of counsel, and nevertheless decided to dismiss the appeal for failure to abide by its previous orders; or whether the court did not find credible the reasons claimed by Petitioner for her failure to file the appellate brief in a timely fashion. The reasons presented in several requests for extension of time were inconsistent, since counsel could not be precluded from attending to her appellate responsibilities because of personal and family

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[1] See Section 4041 Statements of Petitioner, dated January 20, 1992 and January 30, 1992, reproduced in the Appendix to the Petition at Pages A-6 and A-12, respectively.

matters, while at the same time she was actively and continually involved in the trial of several matters.

In Footnote 4 of Petitioner's "Statement of the Case" she claims that the dismissal of her appeal was not technically *sua sponte* by the Appellate Court because a Motion to Dismiss the Appeal had been filed by the Respondent. However, the Respondent's Motion to Dismiss asked for a dismissal on other grounds, namely that the Petitioner was in contempt of certain financial orders of the trial court. That motion was never acted upon by the Appellate Court. Consequently, its dismissal of the Petitioner's appeal was, in fact, *sua sponte*.

Finally, although Petitioner's "Statement of the Case" concedes that the Petitioner's appellate brief was never filed, but only submitted for filing and refused by the clerk because it was late, the second question presented in the Petition inaccurately indicates that the brief was filed.

REASONS FOR DENYING THE WRIT

In Section A of her "Reasons for Granting the Writ," the Petitioner cites *Boddie v. Connecticut*, 401 U.S. 371 (1971). That case involved whether it was fair to deny someone access to the court for purposes of obtaining a divorce, merely because that person could not afford the filing fee required to initiate the divorce action.

In the instant case, the petitioner has been afforded access to the court system, starting with the trial court in the State of Connecticut, then to the Appellate Court and Supreme Court of that state, and finally to this Court. Additionally, unlike Mr. Boddie, the petitioner is far from

indigent. This Court's decision in *Boddie* has no significance for the issue presently before the Court.

The Petitioner also argues that the due process clause implicates appellate rights as well and therefore ensures litigants access to appellate courts. To the contrary, in *Luckenbach S.S. Co., Inc. v. United States,* 272 U.S. 533 (1926), this Court held that appellate review was not essential to due process of law, but is a matter of grace.

> This court has recognized that if a full and fair trial on the merits is provided, the Due Process Clause of the Fourteenth Amendment does not require a State to provide appellate review. *Lindsey v. Normet,* 405 U.S. 56, 77 (1972).

In Section B of Petitioner's "Reasons for Granting the Writ," it is asserted that the state court's dismissal of the appeal has the effect of irrevocably terminating petitioner's ability to seek an equitable distribution of marital property. Even if that statement were true, it does not mean that the Petitioner has been denied due process of law. Finality and certainty of judgments are desired objectives of litigation.

Fair play is the essence of due process. *Galvan v. Press,* 347 U.S. 522 (1954). The purpose of due process provisions, as they relate to judicial procedure, is to ensure fundamental fairness. *Lassiter v. Department of Social Services of Durham County, N.C.,* 452 U.S. 18 (1981), Rehearing denied, 453 U.S. 927 (1971).

The Petitioner has not been denied due process of law.

> The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Matthews v.*

Eldridge, 424 U.S. 319, 333 (1976), citing *Armstrong v. Manzo*, 380 U.S. 545 (1965).

In the instant case, the Petitioner has had ample opportunity to be heard. Not only did the Appellate Court consider the content of her numerous motions requesting extensions of time and relief from orders, but it also afforded her an opportunity to be heard prior to its decision to dismiss the Petitioner's appeal.

It is not a denial of due process for litigants to be required to comply with published rules of procedure. If litigants were able to proceed with their cases at any pace they chose and without regard to uniform procedural restrictions and time requirements, our judicial system would be chaotic. The desired goals of administering justice in an orderly and deliberate manner with finality and conclusiveness would be impossible to achieve.

This Court has long recognized the importance of enforcing procedural requirements. *Schooner Catherine v. United States*, 11 U.S. 468 (1812), *Portland Co. v. United States*, 82 U.S. 1 (1872), *Hurley v. Jones*, 97 U.S. 318 (1877). This Court's historical enforcement of procedural requirements is more recently demonstrated by its refusal to review *Kransniqi v. Dallas City Child Protective Services*, No. 91-1544, 60 L.W. 3795, ___ U.S. ___ (1992). In that matter, an appeal from an order of termination of parental rights was unaccompanied by a timely filed statement of facts or a timely motion to extend time in which to file such a statement, allegedly due to Petitioner's attorney's inadvertent failure to file either. This Court allowed to stand a lower court determination that the parents were

not denied due process by either ineffective assistance of counsel or this Court's strict adherence to its filing deadlines.

Similarly, the Petitioner in the instant case has not been denied due process of law merely because her appeal was dismissed for her failure to meet a specific and clear deadline and to comply with the specific order of the Appellate Court requiring her to file her brief by a date certain.

CONCLUSION

For all of the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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